

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Matthew Campos	Team: Squad #16	CCRB Case #: 201609358	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 11/08/2016 10:00 PM	Location of Incident: New Jersey Avenue and New Lots Avenue	Precinct: 75	18 Mo. SOL 5/8/2018	EO SOL 5/8/2018	
Date/Time CV Reported Wed, 11/09/2016 12:57 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Wed, 11/09/2016 12:57 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Henry Daverin	03631	945645	075 PCT
2. POM Tony Cuoco	17359	950261	075 PCT
3. POM James Seder	06788	947479	075 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Michael Desposito	2001	954726	075 PCT
2. POM Michael Lagattolla	28165	955036	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Henry Daverin	Abuse: Sergeant Henry Daverin stopped § 87(2)(b) and § 87(2)(b)	
B.POM Tony Cuoco	Abuse: Police Officer Tony Cuoco stopped § 87(2)(b) and § 87(2)(b)	
C.POM James Seder	Abuse: Police Officer James Seder stopped § 87(2)(b) and § 87(2)(b)	
D.POM Tony Cuoco	Abuse: Police Officer Tony Cuoco frisked § 87(2)(b)	
E.POM Tony Cuoco	Abuse: Police Officer Tony Cuoco searched § 87(2)(b)	
F.POM James Seder	Abuse: Police Officer James Seder frisked § 87(2)(b)	
§ 87(4-b), § 87(2)(g)		

Case Summary

On November 9, 2016, § 87(2)(b) filed a complaint on behalf of himself and § 87(2)(b) via the online website.

At approximately 10:00 PM on November 8, 2016, § 87(2)(b) and § 87(2)(b) parked their black Honda Accord in front of a fire hydrant at the intersection of New Jersey Avenue and New Lots Avenue in Brooklyn. § 87(2)(b) left the vehicle and went to a nearby grocery store. While § 87(2)(b) was away from the vehicle, 75th Precinct Anti-Crime officers Sergeant Henry Daverin, Police Officer James Seder, and Police Officer Tony Cuoco spotted the vehicle. After watching the vehicle, the officers approached the vehicle to conduct an investigation. The officers approached the vehicle and began to speak with § 87(2)(b). § 87(2)(b) then returned to the vehicle and the officers stopped him, asked for his identification, and asked § 87(2)(b) out of the vehicle (**Allegation A, B, and C**). § 87(2)(b) refused to provide identification. PO Cuoco frisked § 87(2)(b) (**Allegation D**). PO Cuoco then reached into § 87(2)(b)'s pants pocket, and retrieved § 87(2)(b)'s wallet (**Allegation E**). While § 87(2)(b) was being frisked, PO Seder ordered § 87(2)(b) out of the vehicle, and frisked him (**Allegation F**). At some point during the stop, Police Officer Michael Lagatolla and Police Officer Michael Desposito of the 75th Precinct arrived. They did not interact with the civilians. The incident ended when it was discovered that § 87(2)(b)'s brother is an NYPD officer. No arrests were made or summons issued. Sgt. Daverin failed to prepare a memo book entry regarding this incident (**Allegation G**).

This case has video evidence but the video footage does not depict any of the allegations and so it was not included in the board recommendation report. Please note that the full video can be found at Board Review 01 and the transcription of this video can be found at Board Review 02. The video was taken by § 87(2)(b) at the end of the incident.

The investigation was submitted for closure past the 90-day benchmark because witness officers were not identified until February 08, 2017, and not interviewed until February 16, 2016.

An agency attorney was consulted for this case.

Mediation, Civil and Criminal Histories

- § 87(2)(b) rejected mediation during his sworn statement § 87(2)(b) (Board Review 03).
- On March 7, 2017, the Comptroller's office confirmed that a Notice of Claim has not been filed by or on behalf of § 87(2)(b) in regards to this incident (Board Review 04).
- § 87(2)(b)

§ 87(2)(b)

- _____

Civilian and Officer CCRB Histories

- § 87(2)(b) is eighth out of ten CCRB complaints (Board Review 07).

- § 87(2)(b) is first case with the CCRB (Board Review 08).

two of which were unsubstantiated and the last was closed as complainant uncooperative.

§ 87(4-b), § 87(2)(g)

- In CCRB case 201502623, a vehicle search allegation, a refusal to provide a name and shield, and a frisk search were substantiated. The Board recommended Command Discipline A. The NYPD disposition for all allegations was Command Discipline A.
- In CCRB case 201604699, a premises entered and/or searched allegation was substantiated, and § 87(4-b), § 87(2)(g). The NYPD dispositions are pending.
- § 87(4-b), § 87(2)(g)
- PO Cuoco has been a member of service for five years. There are eight prior allegations against PO Cuoco stemming from four complaints; one allegation was substantiated. PO Cuoco has had one previous stop allegation pleaded against him, which was exonerated.
 - In CCRB case 201604699, a premises entered and/or searched allegation was substantiated. The NYPD disposition is pending.
- PO Seder has been a member of service for eight years. There are ten prior allegations against PO Seder stemming from five complaints. One allegation was substantiated.
 - In CCRB case 201603830, a question allegation was substantiated against PO Seder. The NYPD disposition is pending.

Potential Issues

- When § 87(2)(b) filed his complaint, he provided the name and phone number of § 87(2)(b) as a witness. However, when § 87(2)(b) appeared for his CCRB interview, he refused to provide any information regarding § 87(2)(b) because § 87(2)(b) did not want to be identified to the investigation. § 87(2)(b) was unaware § 87(2)(b) name or any other information. After exhausting contact attempts, the investigation was unable to obtain a statement from § 87(2)(b)

Findings and Recommendations

Allegation A—Abuse of Authority: Sergeant Henry Daverin stopped § 87(2)(b) and § 87(2)(b)

Allegation B—Abuse of Authority: Police Officer Tony Cuoco stopped § 87(2)(b) and § 87(2)(b)

Allegation C—Abuse of Authority: Police Officer James Seder stopped § 87(2)(b) and § 87(2)(b)

An agency attorney was consulted for this allegation.

It is undisputed that when the officers approached § 87(2)(b)'s vehicle, it was parked in front of a fire hydrant. It is undisputed that § 87(2)(b) and § 87(2)(b) were stopped. In dispute is whether § 87(2)(b) was seated in the front seat of the vehicle.

In his sworn statement provided to the CCRB on November 30, 2016, § 87(2)(b) stated that he was in the driver's seat of the vehicle when the officers approached it. § 87(2)(b) was seated

in the back seat. The officers began questioning § 87(2)(b) regarding the vehicle ownership and who he was, among other questions § 87(2)(b) could not recall. § 87(2)(b) also stated to the officers that he would move the vehicle if need be. § 87(2)(b) stated that he would call the owner of the vehicle, and then called § 87(2)(b) was asked out of the vehicle before § 87(2)(b) arrived. When § 87(2)(b) did arrive, the officers approached him and asked him for his identification (Board Review 09).

In his sworn statement provided to the CCRB on November 30, 2016, § 87(2)(b) testified that he was not at the vehicle at that time the officers approached, but appeared soon after. § 87(2)(b) stated that § 87(2)(b) was seated in the driver's seat of the vehicle, and § 87(2)(b) was seated in the backseat. When § 87(2)(b) approached, § 87(2)(b) was still seated in the driver's seat and an officer was speaking with him. When the officers approached § 87(2)(b) they asked for his identification and informed him that the occupants of the vehicle stated that he was the driver. § 87(2)(b) claimed ownership of the vehicle, but refused to provide his ID. § 87(2)(b) also stated to the officers that he did not care who informed them that he drove the vehicle. § 87(2)(b) then witnessed the officers ask § 87(2)(b) out of the vehicle (Board Review 03). § 87(2)(g)

§ 87(2)(g) (Board Review 10).

Sgt. Daverin stated that § 87(2)(b)'s vehicle was parked in front of the fire hydrant, and that it appeared that no one was inside the vehicle. Because the vehicle's parking was a violation, and no one appeared to be inside the vehicle, Sgt. Daverin thought the vehicle may have been abandoned and therefore stolen. When the officers approached the vehicle, they observed that two males were in the backseat, and slouched down out of sight. Sgt. Daverin interpreted the slouching as suspicious because he believed they were deliberately hiding from view. Sgt. Daverin could not recall if a specific officer took the lead in asking the two civilians questions, but recalled that the officers attempted to determine who the owner of the vehicle was and what was going on. After questioning the civilians for three to five minutes § 87(2)(b) approached the vehicle and asked what was going on. Sgt. Daverin informed him to move along if he did not have involvement with the vehicle. § 87(2)(b) stated that he was not involved with the vehicle but did not leave. After stating that he was not the owner, § 87(2)(b) did eventually claim ownership of the vehicle. Then, the officers began to question § 87(2)(b) and order that he provide identification (Board Review 11).

PO Seder also stated that the vehicle appeared to be empty, and parked in front of a fire hydrant. PO Seder recalled approaching the vehicle because of the parking violation. Upon approach the officers became aware of two males in the backseat of the vehicle. PO Seder questioned § 87(2)(b) regarding ownership of the vehicle, his and § 87(2)(b) identities, and what they were doing at the time. § 87(2)(b) did not answer the questions but stated that § 87(2)(b) was the owner. After three minutes § 87(2)(b) approached the vehicle. PO Seder asked § 87(2)(b) if he owned the vehicle, which § 87(2)(b) denied. § 87(2)(b) was then instructed to step away from the vehicle. Another officer then approached § 87(2)(b) and questioned him regarding his identification; PO Seder could not recall which officer did so. PO Seder began to question § 87(2)(b) PO Seder continued to speak with § 87(2)(b) and § 87(2)(b) admitted that he had driven the vehicle to the location. After questioning § 87(2)(b) PO Seder asked § 87(2)(b) to step out of the vehicle (Board Review 12).

PO Cuoco also stated that when he and the other officers observed § 87(2)(b)'s vehicle, it was parked in violation in front of the fire hydrant and appeared to be empty, running, and parked crooked. PO Cuoco recalled that he and the other officers believed the vehicle could be stolen. PO Cuoco did not recall being aware of any stolen vehicle reports, but remarked that some stolen vehicle complaints are made the days after a vehicle is stolen. When the officers approached, they discovered that two civilians were inside the vehicle, seated in the back seat. The officers questioned the civilians regarding who owned the vehicle and who drove it to the location, but the civilians stated that they did not know. After approximately one to two minutes § 87(2)(b) approached the vehicle. § 87(2)(b) was asked who he was, but did not identify himself. § 87(2)(b) was asked if the vehicle belonged to him. Initially, § 87(2)(b) denied ownership of the vehicle, but then stated that he was the owner. PO Cuoco asked for § 87(2)(b)'s identification, in order to verify his ownership of the vehicle, and issue § 87(2)(b) a summons for the parking violation (Board Review 13).

When PO Lagatolla and PO Desposito arrived on the scene, the civilians had already been stopped. PO Lagatolla and PO Desposito were not present for the initial interaction with the civilians, and did not receive any radio call that would have informed them of the reasons they were stopped. (Board Review 14 and Board Review 15).

Section 1202 (b) of the Vehicle Traffic Code states, "No person shall stop, stand or park a vehicle within fifteen feet of a fire hydrant except when such vehicle is attended by a licensed operator or chauffeur who is seated in the front seat and who can immediately move such vehicle in case of emergency, unless a different distance is indicated by official signs, markings or parking meters" (Board Review 16).

NYPD Patrol Guide Procedure 209-08 instructs officers on how to issue parking violations summons. The procedure instructs officers to include the first and last name of the violator if they are present (Board Review 17).

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation D—Abuse of Authority: Police Officer Tony Cuoco frisked § 87(2)(b)

Allegation E—Abuse of Authority: Police Officer Tony Cuoco searched § 87(2)(b)

An agency attorney was consulted for this case.

It is undisputed that PO Cuoco frisked and searched § 87(2)(b) § 87(2)(b) stated that after arguing with officers regarding his identification, he was sent to stand at the back of his vehicle. There, an officer frisked his pockets, and removed his wallet from his back pocket.

§ 87(2)(b) testified that after the officers ordered him to provide his identification, he argued with them that he should not have to provide his identification because he was not the driver of the vehicle, and that if the officers wrote a summons, the summons should be for the vehicle. § 87(2)(b) was then ordered to the back of his vehicle. At the back of his vehicle, PO Cuoco approached § 87(2)(b) PO Cuoco moved closer to § 87(2)(b) and § 87(2)(b) took a step back and put his hands in the air to show PO Cuoco that he had nothing in his hands. PO Cuoco instructed § 87(2)(b) not to step back. § 87(2)(b) then stated, “I’m not consenting to any search.” PO Cuoco replied that he did not need consent to search. PO Cuoco frisked § 87(2)(b) § 87(2)(b) s front and back pants pockets, the front pocket of the sweater he was wearing, and his waist area. Immediately after § 87(2)(b) was frisked, PO Cuoco reached into § 87(2)(b) s back pocket and removed his wallet, which contained § 87(2)(b) s identification. PO Cuoco then took something out of § 87(2)(b) s wallet and took a picture of it; § 87(2)(b) was unsure what was taken out of his wallet, but believed it was his identification (Board Review 03).

§ 87(2)(b) stated that § 87(2)(b) argued with PO Cuoco, and refused to provide his identification, prompting PO Cuoco to ask § 87(2)(b) if his license was suspended. Then the officer placed both hands into § 87(2)(b) s front pants pockets in order to retrieve § 87(2)(b) s

wallet. The officer did not remove anything from the pockets. § 87(2)(b) then reached into his own pockets, and recovered his own identification (Board Review 09).

PO Cuoco stated that he was the first officer to speak to § 87(2)(b) after § 87(2)(b) approached the vehicle. PO Cuoco asked § 87(2)(b) who he was, what he was doing, and if he owned the vehicle. § 87(2)(b) stated that he did not own the vehicle, and refused to identify himself. Eventually, § 87(2)(b) did claim ownership of the vehicle, but continued to refuse to provide identification. PO Cuoco instructed § 87(2)(b) to give him his identification in order to verify § 87(2)(b)'s ownership of the vehicle, and issue a summons for the parking violation; § 87(2)(b)'s identification was required in order to issue a summons for the parking violation. PO Cuoco was aware that if the operator of a vehicle is present, their name must be included on the parking summons. § 87(2)(b)'s refusal to provide identification, added to PO Cuoco's suspicions that the vehicle was stolen.

As PO Cuoco spoke with § 87(2)(b) he noticed a bulge in § 87(2)(b)'s back pants pocket. PO Cuoco could not recall the size or shape of the bulge. PO Cuoco believed that § 87(2)(b) could be armed because of the suspected vehicle theft. PO Cuoco remarked that because vehicle theft is a violent crime, it was reasonable to believe the suspects were armed. Other than the connection between the vehicle theft and weapons, PO Cuoco did not recall any indication that § 87(2)(b) was armed.

In order to verify whether or not § 87(2)(b) was in possession of a weapon, PO Cuoco conducted a frisk. PO Cuoco frisked § 87(2)(b)'s waist, chest, and under his arms. PO Cuoco reached in to one of § 87(2)(b)'s back pants pockets, and retrieved § 87(2)(b)'s wallet. With § 87(2)(b)'s wallet, PO Cuoco had access to his identification card, and he learned § 87(2)(b)'s identity. PO Cuoco took a picture of § 87(2)(b)'s identification with a department cellular phone (Board Review 13).

PO Seder stated that he did not witness § 87(2)(b) being frisked or searched by any officer, and did not become aware of another officer frisking § 87(2)(b) at a later time (Board Review 12).

Sgt. Daverin stated that he was unaware if any officers frisked or search § 87(2)(b) at any time. Sgt. Daverin also noted that he believed the vehicle might have been stolen. Sgt. Daverin claimed that the empty vehicle led to suspicion that the vehicle was stolen. Sgt. Daverin still remained suspicious when it was discovered that § 87(2)(b) and § 87(2)(b) were in the vehicle because he believed they were deliberately hiding (Board Review 11).

PO Lagatolla and PO Desposito stated that they did not witness any individual be frisked at any point during the incident. They stated that they did not witness any officer reach into any civilian's pocket and retrieve a wallet. They also stated that they did observe any bulges on them, or any indication that they were armed (Board Review 14 and Board Review 15).

People v. Mack, 26 N.Y. 2d 311 (1970), states the following in regards to frisks involving violent crimes, "Where, however, the officer confronts an individual whom he reasonably suspects has committed, is committing or is about to commit such a serious and violent crime as robbery or, as in the instant case, burglary, then it is our opinion that that suspicion not only justifies the

detention but also the frisk, thus making it unnecessary to particularize an independent source for the belief of danger.” This case would allow a frisk when officers have reasonable suspicion of a serious and violent crime (Board Review 18).

Terry v. Ohio, 392 U.S. 1 (1968), describes how limited frisks can take place without probable cause if the officer reasonably believes that the individual is armed. The case goes on to describe that searches without probable cause are permissible only for weapons (Board Review 19).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation F—Abuse of Authority: Police Officer James Seder frisked § 87(2)(b)

It is undisputed that PO Seder frisked § 87(2)(b) § 87(2)(b) testified that after he was asked out of § 87(2)(b)'s vehicle, an officer frisked him.

§ 87(2)(b) stated that PO Seder spoke to him through the front seat window of his vehicle. PO Seder asked questions regarding his identity, and his destination; PO Seder asked § 87(2)(b) other questions, but § 87(2)(b) could not recall what the questions were at the time of his interview. § 87(2)(b) did not answer any PO Seder's questions because he felt they were not relevant. § 87(2)(b) used his cellular phone to call § 87(2)(b) to inform him of the situation. PO Seder then asked § 87(2)(b) to step out of § 87(2)(b)'s vehicle and walk to rear of the vehicle. § 87(2)(b) thought that he was being asked out of the vehicle because he was speaking to PO Seder with an attitude. PO Seder then frisked § 87(2)(b) at his front pants pockets and his waist. PO Seder also asked § 87(2)(b) if he had anything in his pockets; § 87(2)(b) replied that he did not. PO Seder then instructed § 87(2)(b) to provide his identification, and § 87(2)(b) did so (Board Review 09).

§ 87(2)(b) stated that after § 87(2)(b) was asked out of the vehicle, he was frisked by an officer. However, § 87(2)(b) also stated that he did not witness an officer do so, but believed that it happened because § 87(2)(b) was ordered to the back of his vehicle where he had his hands up and was with an officer (Board Review 03).

PO Seder described the conversation he had with § 87(2)(b) through the backseat of the vehicle's window. PO Seder asked § 87(2)(b) who owned the vehicle he was seated in, who he and the other passenger were, and what they were doing. § 87(2)(b) did not answer PO Seder's questions. Eventually, § 87(2)(b) stated that his uncle owned the vehicle, but § 87(2)(b) also stated that he did not know that individual's name. After three to five minutes, § 87(2)(b) who PO Seder thought to be § 87(2)(b)'s uncle, approached the vehicle. PO Seder asked the § 87(2)(b) if the vehicle belonged to him, and § 87(2)(b) denied ownership of the vehicle. Because § 87(2)(b) and § 87(2)(b) both refused to answer questions, PO Seder believed that the vehicle could have been stolen.

PO Seder continued to question § 87(2)(b) until § 87(2)(b) admitted to driving the vehicle to where it was parked, and then moving to the backseat. As § 87(2)(b) spoke to PO Seder, he was shifting his body side to side, placing his hands under his thighs, and placing his hands into his pockets. PO Seder instructed § 87(2)(b) to stop his movements three to four times; § 87(2)(b) did not respond verbally, and only looked at PO Seder in response.

PO Seder then asked § 87(2)(b) to step out of the vehicle, in order to determine if § 87(2)(b) was armed. PO Seder believed that § 87(2)(b) may have had a weapon on him because of his refusal to answer questions, and his movements. § 87(2)(b) complied with PO Seder's instruction to step out of the vehicle, and then stated to PO Seder, "You can check me." PO Seder then frisked § 87(2)(b)'s pants pockets and waist area. Nothing was removed from § 87(2)(b) and PO Seder supposed that § 87(2)(b) had been reaching in his pocket to adjust his cellular phone. After finding no weapons on § 87(2)(b) PO Seder requested that he provide his ID in order to issue him a summons. § 87(2)(b) complied with the request (Board Review 12).

Sgt. Daverin recalled that out of the two individuals found in § 87(2)(b)'s vehicle, one was asked to step out of it. Sgt. Daverin did not recall which officer asked the individual out of the vehicle. Sgt. Daverin recalled that the individual was then asked to provide an ID, and that the

individual complied. Sgt. Daverin was unaware of any officer frisking the individual (Board Review 11).

PO Cuoco also noted that he believed § 87(2)(b)'s vehicle was stolen upon observing the parking violation and the seemingly empty vehicle. PO Cuoco remarked that in a grand larceny auto situation, he would believe that the suspected individuals were armed. PO Cuoco stated that that at some point while § 87(2)(b) was present, one or both of the individuals found inside the vehicle was asked to step out of the vehicle. PO Cuoco did not recall which officer asked the individual or individuals out of the vehicle, but stated that they were asked out of the vehicle because the officers were unsure if the vehicle was stolen. PO Cuoco recalled that one individual was frisked, but did not recall why. PO Cuoco did not frisk the individual himself, and did not recall which officer did so (Board Review 13).

At no point during the incident did PO Lagatolla or PO Desposito witness any officer frisk any individual. PO Lagatolla and PO Desposito both noted that they did not observe any bulges on the civilians, or any indication that they were armed (Board Review 14 and Board Review 15).

People v. Robinson, 278 A.D.2d 808, describes a situation in which police officers frisk a suspect after repeated commands that the suspect stop reaching into his coat pocket. In regards to frisks, the case states, "Where no more than a common-law right to inquire exists, a frisk must be based upon a reasonable suspicion that the officers are in physical danger and that defendant poses a threat to their safety." The case goes on to describe before the frisk took place, the officers had observed the suspect place his hands into his jacket pocket, and the officers then ordered the suspect to remove his hand from his pocket. The suspect complied, but placed his hand back into his pocket shortly after. After three commands were given to the suspect, and the suspect continued to reach into his pocket, the officers conducted a frisk of the suspect's pocket. The case goes on to describe the permissibility of the frisk by stating the following, "In light of the repeated movements of the defendant toward that pocket despite the officer's requests that he remove his hand from his pocket, we conclude that the frisk was a constitutionally justified intrusion designed to protect the safety of the officers," (Board Review 22).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g) [Redacted text block]

§ 87(2)(g) [Redacted text block]

§ 87(2)(g) [Redacted text block]

§ 87(2)(g) [Redacted text block]

§ 87(4-b), § 87(2)(g) [Redacted text block]

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Squad:

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date